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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,959	11/21/2003	Paul J. Flanningan	59010US002	3577

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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,959

Applicant(s)

FLANNINGAN ET AL.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9, 10, 11, 12, 15, and 20 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The applicant states that the at least one fluid communication component has a tolerance of less than 0.15 mm, 0.1 mm, and 0.05 mm and the face piece insert has a tolerance of about 0.16 to 0.3 but does not state relative to what which is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Resnick US Patent No. 6,701,925. Referring to claim 1, Resnick discloses a protective hood respirator that provides at least one supporting portion (see figure 7) of a face-piece insert 40 (see figure 7); providing at least one fluid communication component 70 (see figures 1 through 3; column 6 lines 1-5) separately from the supporting portion of the face-piece insert 40 (see figure 7); and securing the

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at least one fluid communication component 70 to the at least one supporting portion (see figures 1-7).

Referring to claim 2, Resnick discloses an apparatus that secures a compliant face-contacting member 20 to the face-piece insert 40 (see figures 1 through 7).

Referring to claims 5, 6, and 7, Resnick discloses an apparatus wherein the at least one fluid communication component is a critical tolerance component.

Referring to claim 13, Resnick discloses a face-piece insert 40 (see figure 7) that comprises a supporting portion; and a fluid communication component 70 (see figures 1 through 3) that is non-integrally joined to the supporting portion (see figures 1 through 3).

Referring to claim 14, Resnick discloses an apparatus that further comprises a compliant face contacting member 20 that is non-integrally joined to the supporting portion of the face-piece insert 40 (see figures 1-7).

Referring to claim 17, Resnick discloses an apparatus that further includes a filter cartridge 50b (see figures 1-7) for supporting the mask body over a person's nose and mouth (see figures 1 through 7).

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The intended use statements are not given any patentable weight in this instance for example "for supporting the mask body over a person's nose and mouth".

Referring to claim 18, Resnick discloses an apparatus wherein the fluid communication component comprises part of an inhalation valve 60a-b (see figures 1-7).

Referring to claim 19, Resnick discloses an apparatus wherein the fluid communication component comprises part of an exhalation valve 70 (see figures 1-7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 16, 21, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resnick US Patent No. 6,701,925 in view of Scholey US Patent No. 5,505,197. Referring to claim 3, 16, and 22, Resnick discloses the applicant's invention as claimed with the exception of securing a harness to the mask body.

Scholey discloses a respirator mask with tapered filter mount and valve aligning pins and ears that does secure a harness 18 (see figures 1 and 3) to the mask body. Therefore it would be obvious to modify Resnick's invention by securing a harness to the mask body in order to provide a stronger hold.

Referring to claim 16, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The intended use statements are not given any patentable weight in this instance for example "for supporting the mask body over a person's nose and mouth".

Referring to claims 4 and 23, Resnick discloses the applicant's invention as claimed with the exception of providing at least one filter cartridge that is capable of being attached to the at least one fluid communication component.

Scholey discloses a respiratory mask with tapered filter mount and valve aligning pins and ears that does provide at least one filter cartridge that is capable of being attached to the at least one fluid communication component (see figure 2 and 3). Therefore it would be obvious to modify Resnick's invention by providing at least one filter cartridge that is capable of being attached to the at least one fluid communication component in order to improve the quality of air being breathed.

Referring to claim 21, Resnick discloses the applicant's invention as claimed with the exception of providing a supporting portion and the fluid communication component that are fused together.

Scholey discloses a respiratory mask with tapered filter mount and valve aligning pins and ears that does provide a supporting portion and the fluid communication component that are fused together (see column 3 lines 15-30). Therefore it would be obvious to modify Resnick's invention by providing a supporting portion and the fluid communication component that are fused together in order to improve the quality of air being breathed.

Referring to claim 8, the applicant states that the at least one supporting portion of the face-piece insert and the at least one fluid communication component are made from similar polymeric materials and are fused together. Since the applicant has not pointed out the criticality of having the at least one supporting portion of the face-piece insert and the at least one fluid

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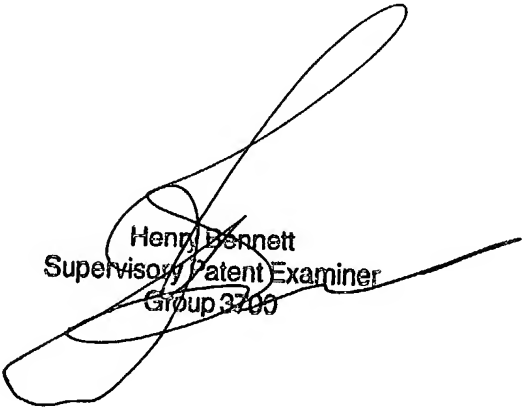
communication component made from similar polymeric materials, the materials used to make these components is simply a matter of design choice.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP
April 13th, 2004



Henry Bennett
Supervisory Patent Examiner
Group 3700